

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1997] SGHC 335

Suit 1510/1994

Between

D & C Property Pte Ltd

... Plaintiff

And

Lew Guan Seng (a bankrupt)

... Defendant

GROUND OF DECISION

Insolvency Law — Administration of insolvent estates

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Christopher Lau JC
09 December 1997

1 **CHRISTOPHER LAU JC**

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Of the three summonses fixed for hearing in these proceedings, it was common ground that the principal issues were those raised in SIC 4863/97. This was an application by the Official Assignee. The issues that arose for determination in SIC 4863/97, were : (a). whether the second defendant's interest in a property known as 17B Nassim Road #02-04 Nassim Park, Singapore (the Nassim property) which had since been sold was by way of a gift from her husband, the first defendant, a bankrupt;

3 (b). if so, whether the gift, which was within two years of the adjudication of the bankruptcy of the first defendant, should be set aside and in that event;

4 (c). whether the moneys representing the sale proceeds of the Nassim property should be paid to the Official Assignee of the estate of the first

defendant after deduction of a sum representing an earlier judgment debt obtained against the first defendant by the plaintiffs in this action.

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2.The result of these issues determined the orders to be made in SIC 531/95 and SIC 867/95. In SIC 531/95 the plaintiffs applied to vary the Mareva order for all the sale proceeds to be paid to the plaintiffs` solicitors to hold as stakeholders. In SIC 867/95 the second defendant applied to vary the Mareva order for only part of the sale proceeds to be paid to the plaintiffs` solicitors as stakeholders.

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3.The second defendant`s case was that her interest had not been acquired by way of a gift and that even if it had been, the gift was not void as the first defendant did not have an interest in the Nassim property before effecting the gift. On this latter point, the second defendant`s case was that para 6(1) of the Schedule to the Bankruptcy Act (Cap 20, 1996 Ed) (the new Act), which Schedule sets out the transitional provisions in relation to persons adjudicated bankrupt before 15 July 1995, provided that only s 52 of the repealed Act was to apply in the determination of whether the gift was void and under s 52, a gift was only rendered void if the bankrupt, ie the first defendant, had an interest in the property the subject of the gift before effecting the gift. She relied on a passage in the judgment of Yatim J in **Official Assignee of the Property of Senator Ibrahim bin Haji Yaakob (a bankrupt) v Siti Ramlah bte Bajau** [1991] 2 MLJ 479 at p 482D-F, as authority for this proposition. That case concerned the Malaysian equivalent of s 52 of the repealed Act.

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4.The Official Assignee`s position was quite the opposite. On the issue as to whether the second defendant had acquired her interest as a gift, his case was that that issue had already been determined by CR Rajah JC earlier when CR Rajah JC held that the second defendant`s interest had arisen by way of a gift. As for the second defendant`s latter submission, it was the Official Assignee`s case that paras 1 and 6 of the Schedule effectively introduced a two-fold test for the determination of the validity of a gift made by a bankrupt under the provisions of the repealed Act and that there was no basis in law for the second defendant`s submission that under the repealed Act, for s 52 to apply, the bankrupt had first to have an interest in the property before effecting the gift.

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5.I determined all the issues in favour of the Official Assignee. I considered that the second defendant`s interest in the property had arisen by way of a gift from the first defendant and that as it was a gift made within two years of the first defendant`s bankruptcy, the gift was void and payment of the moneys representing the sale proceeds of the Nassim property vested in the Official Assignee. These are my reasons.

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6.On 14 April 1997, in a written judgment on the preliminary issue between the plaintiffs and the second defendant as to whether the second defendant had an interest in the Nassim property and if so, what the nature and extent of that interest was, CR Rajah JC held that the second defendant`s interest in the Nassim property had arisen by way of a gift from the first defendant. He held:

21 I accept the second defendant's evidence that it was the first defendant's intention to give her a half share in the Nassim property. I therefore find that it was the specific intention of both the first and second defendants when they purchased the property in their joint names that they should each have an equal half share in the legal and beneficial ownership of the Nassim property

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And he re-stated this finding of a gift in para 23 when he said:

The plaintiffs also argue that if the court finds that the second defendant's interest in the Nassim property arose by way of a gift from the first defendant, and I have so found in accepting the second defendant's evidence in this regard

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His finding in effect upheld the second defendant's case on the preliminary issue which was that her interest in the Nassim property had arisen by way of a gift from the first defendant.

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7. That being the finding on that issue, it was not open to me to inquire again into how the second defendant's interest in the Nassim property had arisen or what that interest was. Her interest had already been held to have arisen by way of a gift from her husband, the first defendant.

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8. The first defendant had been adjudicated a bankrupt on 26 May 1995, under the provisions of the now repealed Bankruptcy Act (Cap 20) (the repealed Act).

The first defendant's interest in the Nassim property had arisen on or about 16 August 1993 which was the date of the first and second defendants' agreement with the developer for the purchase of the Nassim property. The gift to the second defendant would therefore have been within two years of the first defendant's bankruptcy.

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9.Paragraph 6 of the Schedule is not intended to prejudice bankrupts made bankrupt under the repealed Act in that any application to set aside a transaction under the provisions of the new Act will fail unless the applicant satisfies the requirements of both the repealed Act and the new Act.

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10.Under the repealed Act, s 52(1) and (3), the gift of the first defendant's half share of the Nassim property to the second defendant was absolutely void against the Official Assignee as it was a settlement of property on the second defendant taking place within two years of the first defendant's being adjudicated a bankrupt. It did not matter that the first defendant's interest in the property had not been acquired before effecting the gift. **Siti Ramlah**'s case was not authority for such a proposition and Yatim J did not so hold. All Yatim J did in the passage in his judgment that the second defendant referred to in support was to recite the facts of that case. The gift under s 52 was therefore void.

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11.The gift was also void under the provisions of the new Act. Under paragraph

1(1) of the Schedule, the first defendant who was a bankrupt on 15 July 1995 continued to be a bankrupt until discharged and the provisions of the new Act applied in relation to him as if he had become a bankrupt under the new Act. Section 98 provides:

(1) Subject to this section and sections 100 and 102, where an individual is adjudged bankrupt and he has at the relevant time (as defined in section 100) entered into a transaction with any person at an undervalue, the Official Assignee may apply to the court for an order under this section. (2) The court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if that individual had not entered into that transaction. (3) For the purposes of this section and sections 100 and 102, an individual enters into a transaction with a person at an undervalue if -

(a) he makes a gift to that person or he otherwise enters into a transaction with that person on terms that provide for him to receive no consideration; (b) (c)

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The first defendant had in these circumstances made a gift of a half share in the Nassim property to the second defendant, his wife, at an undervalue.

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12. Section 100 of the new Act in turn provides:

(1) Subject to this section, the time at which an individual enters into a transaction at an undervalue or gives an unfair preference shall be a relevant time if the transaction is entered into or the preference given -

(a) in the case of a transaction at an undervalue, within the period of 5 years ending with the day of the presentation of the bankruptcy petition on which the individual is adjudged bankrupt; (b) (c)

(2) Where an individual enters into a transaction at an undervalue or gives an unfair preference at a time mentioned

in subsection (1) (a), (b) or (c), that time is not a relevant time for the purposes of sections 98 and 99 unless the individual -

(a) is insolvent at that time; or (b)

(3) Where a transaction is entered into at an undervalue by an individual with a person who is an associate of his (otherwise than by reason only of being his employee), the requirements under subsection (2) shall be presumed to be satisfied unless the contrary is shown. (4)

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Section 101(2) of the new Act then provides:

A person is an associate of an individual if that person is the individual's spouse, or is a relative, or the spouse of a relative of the individual or his spouse.

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13. Under the provisions of the new Act therefore: (a). the second defendant's interest in the Nassim property was a transaction at an undervalue because it was a gift,

21 (b). the gift was made within five years, and

22 (c). as the gift was made to an associate of the bankrupt, there was a presumption of insolvency.

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14. Accordingly as the gift to the second defendant was also impeached under the provisions of the new Act and as the gift was now represented as moneys in the hands of the plaintiffs' solicitors as stakeholders, under s 102(1)(a) and (b)

D & C Property Pte Ltd v Lew Guan Seng (a bankrupt) and Others[1997] SGHC 335

of the new Act, the Official Assignee was to be vested with these proceeds and I so ordered.

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15. In these circumstances it was appropriate also that no orders be made in respect of the applications in SIC 531/95 and SIC 867/95.

Christopher Lau JC

Tan Liam Beng (Drew & Napier) for the plaintiffs
Siaw Kheng Boon (Siaw Kheng Boon & Co) for the second
defendant
Gan Kam Yuen (Bih Li & Lee) for the Official Assignee
